

## **REMARKS/ARGUMENTS**

### **Summary of Pending Claims**

Claims 26 to 30 remain pending as previously presented.

### **Double Patenting**

A Terminal Disclaimer is being filed in a package with this response in relation to Application Nos. 09/425,234 and 10/377,647 to obviate the provisional obviousness-type double patenting rejections.

### **Claim Rejections – 35 USC 102**

Claims 26-36 were rejected as being anticipated by Smith '479. The Applicants respectfully traverse this rejection.

The Office Action notes that Smith ' 479 does not advocate draining the tank but cites the *Celeritas* and *In re Susi* cases in relation to anticipation rejections. Neither case contradicts the basic requirement that a reference, to anticipate, must disclose all of the claimed elements combined and arranged as in the claim. *In re Bond* 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Smith '479 fails to disclose all elements of the claims, combined and arranged as described in the claims. For example, in regard to claim 26, the Office Action alleges that Figure 4 of Smith discloses wetting the membranes at least once a week with a cleaning fluid. This allegation is incorrect. Further, claim 26 requires, among other things, a step of draining the tank as part of a repeated cycle and a step of wetting the membranes as described in step (f) of claim 26. The process of Figure 4 does not describe a process in which the tank is drained as part of a repeated cycle and does not disclose wetting the membranes in a manner that meets all of the requirements of part (f) of claim 26. Similarly, the reference cited in the Office Action to backwashing in column 11, lines 22-61 of Smith is not disclosed as part of a process having all of the claim elements.

The remaining claims depend from claim 26 and are not anticipated for at least the reasons given in relation to claim 26. Further, none of the cited references given in the Office Action evidence disclosure of a process having all of the claimed features. For example, the majority, if not all, of the cited references relate to processes in which the tank is not drained at all. Regarding claims 31 and 35, the cited references further fail to disclose the subject matter added by those claims over and above the claims they depend on.

For the reasons above, the Applicants submit that the claims are allowable.

Respectfully submitted,

**COTE et al.**

By Scott R. Pundsack  
Scott R. Pundsack  
Reg. No. 47,330  
Tel: (416) 957-1698